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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,523	10/18/2001	Gerard Mougey	Q64953	4595
7590 08/06/2004				
Sughrue Mion Zinn Macpeak & Seas 2100 Pennsylvania Avenue NW Suite 800 Washington, DC 20037-3213				
			EXAMINER PRICE, CARL D	
			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/869,523	MOUGEY, GERARD	
	Examiner	Art Unit	
	CARL D. PRICE	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/08/04 and 06/02/04 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously examined.

Claims 1-5 are in the form previously presented.

New claim 6 has been added.

Applicant argues that the prior art of record does not show “at least the end of any of the gas supply tubes” having “its axis appreciably not parallel to an opposing wall of the mixing tube”, in the manner now set forth in newly added claim 6.

With regard to the rejection of claims 1-5 under 35 U.S.C. 102(b) as being anticipated by Wall (U.S. Patent No.- 2164263) applicant relies on the reasons presented in the Amendment filed March 8, 2004 in which Applicant argues U. S. Patent No. 2,164,263 to Wall does not disclose the subject matter of Claims 1-5.

In the Amendment filed March 8, 2004 in which Applicant argues that since the body of the claim includes the recitation “a plurality of gas supply tubers (6) are arranged in at least one ring around the central supply (1)”, the body of the claim depends on the preamble for

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completeness. The examiner disagrees. Absent a positive structural recitation in the claims of, for example, a source of a “gas containing hydrocarbons”, the mere statement in the claim that the device is “for the combustion of gas containing hydrocarbons that can be burned in the presence of air, ... wherein the venturi (2) ...” and the mere labeling of the plurality of tubes (6) as “gas supply” tubes do not rise to the level of structural differences and are not sufficient to distinguish the claimed invention over the prior art of record. The examiner maintains the position that Wall, includes structure the same as that set forth in applicant’s claims, and is therefore capable of performing the intended use recited in claims 1-5, and 6. Claims 1-5 are therefore remain rejected under 35 U.S.C. 102(b) as being anticipated by Wall (U.S. Patent No.- 2164263). See the rejection of the claims set forth herein below.

With regard to applicant’s argument that the nozzles of Wall “are not simple tubes as in the present application” it is noted that the limitations of claims 1-5 do not preclude tube structure such as that shown in Wall. Indeed, applicant’s claims are not limited to “simple tubes as in the present invention”. In this regard applicant’s argument is not commensurate with the scope of the claimed invention.

Applicant’s also argues that the axes of the Wall nozzles are “not substantially parallel to a diverging part of the main venturi, but to a converging part of the same”. In this regard, applicant’s argument is not commensurate with the scope of the claimed invention. Applicant’s claims merely require “at least the ends” of the gas supply tubes to be “appreciably parallel” to “a wall” of the mixing tube. Contrary to Applicant assertion the scope of the invention set forth

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in claims 1-5, and 6, is not restricted an arrangement where the nozzles are substantially parallel to a diverging part of the main venturi. The conical part of the Wall venturi (i.e.- either 16 or 19) defines a continuous "wall" in the same manner broadly set forth in claims 1-6 which is appreciable parallel to the nozzles (22), albeit the nozzles (22) are arranged in a converging orientation. In this regard, applicant's claims fail to distinguish over the prior art reference of Wall (U.S. Patent No.- 2164263). See the rejection of claims 1-5 Wall (U.S. Patent No.- 2164263) under 35 U.S.C. 102(b) herein below.

Claim Rejections - 35 USC § 112, first paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this regard, claim 6 includes the limitation "an opposing wall" which is deemed to be subject matter not described in the specification at the time the application was filed. The mixing tube shown and disclosed by applicant (e.g. - see Figure 2a) is circular in cross section defining a single

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continuous curved “wall” surface and does not include “an opposing wall” in the manner now set forth in claim 6.

Claim Rejections - 35 USC § 11, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6: Rejected under 35 U.S.C. 112, second paragraph

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2 of claim 6, it is unclear with respect to what element recited in the claims the “opposing” wall location is to be referenced or oriented.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide proper antecedent basis for the term “an opposing wall” (claim 6).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6: Rejected under 35 U.S.C. 102(b)

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Zink et al (U.S. Patent No.- 3,659,962) (of record).

In regard to claims 1-6, Zink et al (U.S. Patent No.- 3,659,962) show (Figure 4) a combustion device where gas inlet (16), extending to source of gas, communicates with a body forming a venturi tube (10) having an upper conical mixing tube portion (11; see figure 1). A plurality of gas supply tubes (36) communicate with the gas inlet and form a ring about a central tube (38) positioned along the same axis as the venturi tube. The ends of the plurality of tubes are arranged appreciably parallel to a wall portion (14) of the venturi mixing tube (10). And, the axis of at least the end of any tube (36) is not appreciably parallel to the “opposite” conical upper wall portion (15). In regard to claims 2 and 4, each of the twelve gas tubes (36) is necessarily

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sized to carry 1% to 33% of the total volume of gas flowing through the thirteen supply tubes (33,36). In regard to claims 3 and 5, the outside diameter of the central tube (33) in Zink et al (U.S. Patent No.- 3,659,962) is shown to be greater than the outside diameter of the surrounding tubes (34,36).

Claims 1-5: rejected under 35 U.S.C. 102(b)

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Wall (U.S. Patent No.- 2164263).

In claims 1-5 the, recitation “*for the combustion of gas containing hydrocarbons that can be burned in the presence of air, in which fuel gas arrives by a central supply*” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Also, in the claims, the terms “gas supply” used to describe the “tubes”, for example, are deemed to be recitations of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative

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difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case the prior art reference of Wall is capable of performing the intended use of a gas supply.

Wall shows a device where gas (see page 1, lines 22-23; “inlet 2 for the admission of steam or equivalent motive fluid”) is delivered to a conical mixing tube portion (19) of a venturi by a plurality of gas supply tubes (22) formed in a ring about a central tube (38) and communicating with a central tube (1). The ends of the plurality of tubes are arranged appreciably parallel to the opposing wall portion (19) of the venturi mixing tube (Note: The axis of any tube (22) is appreciably parallel to the opposite wall portion of the conical shaped mixing tube). In regard to claims 2 and 4, each of the six annularly arranged tubes is sized to carry 1% to 33%, or between 5% and 33%, of the total volume of gas flowing through the seven supply tubes (22,38). In regard to claims 3 and 5, the outside diameter, at the inlet end, of the central tube (38) in Wall is shown to be greater than the diameter of the surrounding tubes (22).

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749